Supreme Court
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No. 93-847

In The

Supreme Court of the United States

October Term, 1993

R. WAYNE HICKS,

Petitioner,

v.

JOHN E. ROARK, JR.,
AND
ROADSIDE NURSERIES, INC.,
A VIRGINIA CORPORATION,

Respondents.

On Petition For Writ Of Certiorari
To The Circuit Court Of Campbell County, Virginia

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LEIGHTON SUMMERSON HOUCK
Counsel of Record
for the Respondent
Virginia State Bar No. 07526
CASKIE & FROST,
a Professional Corporation
Post Office Box 6360
Lynchburg, Virginia 24505
(804) 846-2731

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
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QUESTION PRESENTED

Does the Supreme Court of the United States have jurisdiction in this case.

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STATEMENT OF THE CASE

The Respondents, John E. Roark, Jr. ("Roark") and Roadside Nurseries, Inc. ("Roadside"), set forth the following facts and circumstances to clarify the Petitioner, R. Wayne Hicks ("Hicks") statement of the case in the Petition for Writ of Certiorari ("the Petition"). References will be made to pages in the Petition as "Pet. p. ___" and to pages in the appendix contained in the Petition as "App. p. ___".

Roark and Hicks entered into a joint venture to purchase a tract of real property located in the area of Lynchburg, Virginia in 1976. The purpose of the joint venture was to develop a small shopping center on the property. Roadside was a corporation owned by Mr. Roark and Roadside operated a gift shop business and also a lawn and garden business which would be the anchor tenants in the shopping center. The real property was purchased and the property was developed. Thereafter, Roark and Hicks had a dispute regarding Roark's ownership interest in the venture. This chancery suit was filed by Roark in the Circuit Court of Campbell County, Virginia ("Trial Court") on or about August 17, 1982 asking for an accounting of the transactions of the joint venture, enforcement of Roarks ownership claim, and damages. By Order entered April 12, 1984 the Trial Court ruled that Roark's claims were time barred. See Commissioners Report, App. pp.152-160. This order was appealed to the Virginia Supreme Court which reversed the Trial Court and found that Roarks claims were not time barred and remanded the case to the Trial Court for further proceedings. See *Roark v. Hicks*, 234 Va. 470, 362 S.E.2d 711 (1987). Upon remand, the Trial Court by Order entered July 19, 1988 referred the case to Robert M. Musselman as Commissioner in Chancery for an accounting. Mr. Musselman filed a report and supplemental report with the Trial Court dated May 21, 1991. The reports found that the real property which is the subject of this suit was an asset of the joint venture and should be sold by judicial sale and also denied, in part, Mr. Hicks' claim for interest. See Commissioners Report and Supplemental Report, App. pp.152-193. Both parties filed exceptions to

Musselman's report. The Trial Court gave its letter ruling on the exceptions dated August 25, 1992. App. pp.111-146. On or about September 21, 1992 Hicks filed with the Trial Court, a Motion to Set Aside Verdict which he claims in his Petition, raised issues involving federal questions. Hicks alleges that the Trial Court rulings conflict with Article I, Section 7 of the Constitution of Virginia and deprive him of his property without just compensation. Pet. p.26. On January 21, 1993 the Trial Court entered its decision carrying out the rulings in the August 25, 1992 letter. App. pp.101-110. Hicks filed a Petition for Appeal to this order to the Virginia Supreme Court which was refused by Order entered June 25, 1993. App. p.197. Hicks filed a Petition for Rehearing to the Supreme Court of Virginia which was denied by Order entered July 30, 1993. App. p.198. Hicks then filed this Petition for Writ of Certiorari in this Court.

SUMMARY OF REASONS FOR DENYING WRIT

The Supreme Court of the United States lacks jurisdiction over this case. Hicks failed:

(1) to point out in his Petition the statute upon which jurisdiction can be invoked in this case;

(2) to timely raise a federal question in this case;

(3) to show that the Trial Court ruled incorrectly on a federal question; and

(4) to show that the Virginia Supreme Court ruled incorrectly on a federal question.

The rulings of the Trial Court are based upon valid and adequate State grounds, not upon federal questions.

ARGUMENT

Rule 14.1(e) of the Supreme Court of the United States requires the Petition to contain a statement of the grounds upon which jurisdiction is invoked and which shows the statutory provisions believed to confer jurisdiction to review the judgment or decision in question. Hicks cites 28 U.S.C. Section 1254(1) to invoke jurisdiction in this Court. Pet. p.7. A reading of this statute shows that it applies to cases in the federal courts of appeal, not state courts.

The Petition also fails to show the way in which any federal question was incorrectly passed on by the state Trial Court and the Supreme Court of Virginia. Also the Petition fails to show assignment of error raising federal questions which may have been made to the Supreme Court of Virginia. Thus, the Petition does not meet the requirements of Rule 14.1(h) of the Supreme Court of the United States. See also *Yazoo & M.R. Co. v. Adams*, 180 U.S. 41 (1901). The Petition fails to show that a federal question was incorrectly decided by either the Trial Court or the Supreme Court of Virginia. *Live Oak Water Users Asso. v. Railroad Commission*, 269 U.S. 354 (1926).

The Petition claims the Trial Court rulings conflict with Article I, Section 7 of the Virginia Constitution and deprive him of his property without just compensation. The Virginia Constitution is considered a state statute and is not a ground for certiorari. *Millers Exrs. v. Swann*, 150

U.S. 132 (1893). The rulings of the Trial Court are interpretations of State of Virginia partnership statutes and prior court cases involving state law. Hicks fails to explain how the Trial Court rulings amount to deprivation of his property without just compensation. The Petition fails to present with accuracy, brevity or clarity what is essential to an understanding of the points which are requested to be considered. See Rule 14.5 of the Supreme Court of the United States.

The Supreme Court has no jurisdiction to review a state court decision which is based upon adequate state grounds. *Bell v. Maryland,* 378 U.S. 226 (1964). The state court decisions in this case are based upon adequate state grounds and not upon federal questions.

Hicks' complaints are that the evidence in this case did not justify the state court decision in favor of Roark. However, this Court does not reweigh evidence. *Southern Power Co. v. North Carolina Pub. Serv. Co.,* 263 U.S. 508 (1924). Hicks' complaints about the judicial system in the State of Virginia do not provide federal questions which would invoke the jurisdiction of this Court.

This is a frivolous appeal. Hicks has not stated any basis upon which to invoke the jurisdiction of this Court. The fact that Hicks considers the decision of the Trial Court to be unfair to him is no ground for jurisdiction. Hicks cites no cases which support his allegations and arguments. A summary of Hicks argument is that he is disappointed and disgruntled that he did not prevail on his arguments in the state court.

CONCLUSION

Based upon the reasons and authorities set forth above, it is submitted that this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

John E. Roark, Jr. and
Roadside Nurseries, Inc.

LEIGHTON SUMMERSON HOUCK
Counsel of Record
for the Respondent
CASKIE & FROST,
a Professional Corporation
Virginia State Bar No. 07526
2306 Atherholt Road
Post Office Box 6360
Lynchburg, Virginia 24505
(804) 846-2731